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RAJESH VALLABH 64 NONANTUM STREET NEWTON, MA 02458			EXAMINER SMITH, JEFFREY A	
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/598,196
Filing Date: June 21, 2000
Appellant(s): VALLABH, RAJESH

MAILED

JUL 30 2004

GROUP 3600

Rajesh Vallabh
Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed with a
Certificate of Mailing dated 20 April 2004.

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(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

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(6) Issues

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows:

E. Whether Claims 17 and 22-25 are unpatentable under 35 U.S.C 103(a) over Domain, Jenkins, Matsumori in view of Hall.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1, and 4-10 stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claims 12-48 stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claims 49-61 stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Additionally, the Examiner notes that Appellant's brief fails to include claims 2, 3, and 11 in any grouping. However, based upon Appellants arguments (or lack thereof) in support of claims 2, 3, and 11, these claims have been grouped as follows:

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Claim 2 stands or falls alone. Appellant's brief provides reasons in support of such grouping at page 14, item "II".

Claim 3 stands or falls alone. Appellant's brief provides reasons in support of such grouping at page 14, item "II".

Claim 11 stands or falls together with claims 1 and 4-10. Appellant's brief does not include a statement that this grouping of claims stands or falls alone or with any other grouping and reasons in support thereof. See 37 CFR 1.192(c)(7).

Accordingly, the Examiner has determined the grouping of claims to be as follows:

Claims 1, and 4-11 stand or fall together.

Claim 2 stands or falls alone.

Claim 3 stands or falls alone.

Claims 12-48 stand or fall together.

Claims 49-61 stand or fall together.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(9) Prior Art of Record

5,158,155	Domain et al.	10-1992
5,186,281	Jenkins	02-1993
5,640,002	Ruppert et al.	06-1997
6,026,375	Hall et al.	02-2000
6,246,998 B1	Matsumori	06-2001

(10) Grounds of Rejection

The grounds of rejection which are applicable to the appealed claims are provided for the convenience of both Appellant and the Board of Patent Appeals as Appendix A. Such grounds of rejection were stated in the final Office action mailed 15 October 2003.

(11) Response to ArgumentArgument I

Appellant argues that "[T]he Examiner relies on Domain for disclosing the step of receiving an online order from a customer for grocery products the customer desires to pick up at a given location, said order being received from the

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customer while the customer is at a location remote from said given location. Domain, however, does not disclose or in any way suggest this step.". Appellant further argues that "[t]he order stations, which are staffed with order clerks, are located at the complex or premises where the products are picked up, and not remote from the complex or premises". (Brief: paragraph bridging pages 9 and 10).

The Examiner first notes that the relevant portion of claim 1 recites:

"receiving an online order from a customer for grocery products the customer desires to pick up at a given location, said order being received from the customer while the customer is at a location remote from said given location" (claim 1, lines 2-4) (emphasis added).

Such portion does not recite "remote from the complex or premises" as argued by Appellant. As recited, the relevant portion of claim 1 merely identifies that the "order" location is located away from the location where the products are picked up—not, necessarily, as Appellant contends, that the order location is located away from the complex or premises where the products are picked up. As acknowledged by Appellant in the brief, Domain discloses customer order stations (14) as well as customer pick-up stations (16). Stations (14) and stations (16) are shown in Fig. 1 to be away from each other (i.e. they are not at

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the same location) and are therefore considered "remote" from each other. Notwithstanding this interpretation, however, and as noted at page 20 of the final Office action, Domain additionally discloses that orders may be submitted by telephone or facsimile and that such orders may be picked up by customers of the Vendor Complex (see Domain: col. 11, lines 24-27). This disclosure by Domain certainly is in keeping with Appellant's apparent interpretation of the term "remote" as being "not located at the complex or premises where the products are picked up" (paraphrasing from the brief at page 10). The Examiner, however, believes that the relevant portion of claim 1, as recited, "reads-on" either embodiment disclosed by Domain.

Appellant argues that "Domain does not disclose or suggest receiving any online order from a customer" and that "In Domain, the customer does not send an online order to anyone. There are no online orders from the customer to the order clerk, and no orders whatsoever from the customer to the vendor.". (Brief: page 10, first full paragraph).

Appellant's arguments here are not clear as to their focus. It is unclear whether Appellant is arguing (a) that

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Domain does not disclose that the customer enters the order directly, or (b) that Domain simply does not disclose "online" in a manner interpreted by Appellant. The former argument will be addressed immediately, while the latter argument will be addressed later in response to additional arguments by Appellant regarding the interpretation of "online".

The Examiner notes that the relevant portion of claim 1 recites:

"receiving an online order from a customer for grocery products the customer desires to pick up at a given location, said order being received from the customer while the customer is at a location remote from said given location" (claim 1, lines 2-4) (emphasis added).

As stated in the final Office action at page 20:

"The Examiner interprets Domain et al. as receiving an online order since the customer's order is placed through a primary computer via a microprocessor terminal (see col. 15, lines 20-32, for example). As such, a customer order is received by a vendor "online". Additionally, Domain et al. discloses that orders which have been submitted by telephone or facsimile may be picked up by customers of the Vendor Complex (col. 11, lines 24-27). This variation is another form of receiving an online order from a customer."

In either embodiment identified above, the customer initiates an order and presents it to the Domain "Complex"—either through the order station (14) interface or through

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a telephone or facsimile interface. In doing so, the customer is engaging in an online order (either via the audio communication system (col. 7, lines 39-43) or via the telephone or facsimile (col. 11, lines 24-27)).

Nonetheless, the claim recites, not the placing of the order, but the receipt of the order. As emphasized above, claim 1 recites "receiving an online order from a customer". There is no specificity as to at what point in the method the order is considered "received" and from whom. Moreover, there is no specificity as to what entity is "receiving" the order and from whom. Accordingly, the recitation "receiving an online order from a customer" is considered satisfied because the customer's order is received and processed by and throughout the Domain Vendor Complex (various stages and by various entities).

Moreover, and assuming *arguendo* that the clerk's receipt of the order from the customer in either embodiment does not constitute "receiving an online order from a customer", the fact remains that the clerk of Domain passes the customer's order which is then received by other entities of the Domain Vendor Complex as an online order from the customer. The Examiner, however, believes that

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the relevant portion of claim 1, as recited, "reads-on" any of the embodiments disclosed by Domain.

Appellant argues that "Neither ordering method [of Domain] is receiving an online order from a customer. The term 'online' is well known to mean electronically connected to a computer network or accessible by computer." Appellant proceeds to provide an example from the instant specification which identifies a preferred embodiment of the instant invention including client machines, e.g. personal computers and wireless hand-held devices. Applicant further argues that "[w]hile the clerk of Domain might be considered to be online when entering the customer order at his or her terminal, he or she does not in any way receive any online order from the customer". (Brief: paragraph bridging pages 10 and 11).

Again, Appellant's arguments here are not clear as to their focus. It is unclear whether Appellant is arguing (a) that Domain does not disclose that the customer enters the order directly, or (b) that Domain simply does not disclose "online" in a manner interpreted by Appellant. The latter argument will be addressed here, while the former argument has been be addressed previously.

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The Examiner notes that the relevant portion of claim 1 recites:

"receiving an online order from a customer for grocery products the customer desires to pick up at a given location, said order being received from the customer while the customer is at a location remote from said given location" (claim 1, lines 2-4) (emphasis added).

Appellant's remark that "[w]hile the clerk himself or herself might be considered to be online when entering the customer order at his or her terminal, he or she does not in any way receive any online order from the customer" is not commensurate with the recitation of claim 1. The relevant portion of claim 1 contains no specificity as to at what point in the method the order is considered "received" and from whom. Moreover, there is no specificity as to what entity is "receiving" the order and from whom. The customer's order is received and processed by and throughout the Domain Vendor Complex (at various stages and by various entities). In Appellant's example, the clerk passes the customer order, in an online manner, to another stage and another entity of the Domain Vendor Complex. Accordingly, that stage and/or entity of the Domain Vendor Complex "receives an online order". The Examiner, however, believes that the relevant portion of claim 1, as recited, "reads-on" any of the embodiments

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disclosed by Domain. For example, the customer initiates an order and presents it to the Domain Vendor Complex—either through the order station (14) interface or through a telephone or facsimile interface. In doing so, the customer is engaging in an online order (either via the audio communication system (col. 7, lines 39-43) or via the telephone or facsimile (col. 11, lines 24-27)).

Appellant argues that Domain would be incompatible with and teaches away from combination with Matsumori" because the Matsumori Internet based ordering system would "preclude the visual verification of the customer required by Domain when placing the order". (Brief: page 11, first full paragraph).

The Examiner notes that Domain does not suffer from combination with Matsumori on this basis. Domain implements video verification for the purposes of authentication of a customer's identification or age for certain restricted transactions (col. 7, line 61-col. 8, line 7). This is an enhancement of the fundamental model of the Domain Vendor Complex for the purposes of exploiting certain restricted transactions (such as payment by check, and the purchase of age restricted items such as liquor).

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For example, in the embodiment in which the customer interfaces via telephone or facsimile, Domain makes no mention of visual verification of the customer--yet the Domain Vendor Complex functions as fundamentally disclosed.

Appellant argues that "there is no indication in Domain as to how or why any Internet based ordering system could or should be implemented in its vendors' structural complex". (Brief: page 11, first full paragraph).

The Examiner notes that "Internet" is not recited in claim 1. Such argument is more relevant to Appellant's arguments in support of claim 2, which will be addressed later.

Appellant argues that the combination of teachings of Jenkins and Domain is simply an "impermissible hindsight combination by the Examiner".

The Examiner has not relied upon Appellant's own teachings to provide motivation for combining the teachings of Domain and Jenkins. Rather, the Examiner has provided (see final Office action at page 3, second full paragraph-paragraph bridging pages 3 and 4) explicit teachings in Jenkins (at col. 6, lines 5-33) in order to advance a case

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of obviousness. In that such motivation was taken solely from the prior art (i.e. Jenkins), it cannot be said that the Examiner relied upon an improper hindsight reasoning.

Appellant argues that "[t]here would be no reason to provide such a final checkout area in Domain since payment for the products in Domain has already been made at the customer order station". (Brief: page 11, first full paragraph).

The Examiner has not relied upon Jenkins for its teaching of providing a checkout/payment area. Instead, the Examiner relies upon Jenkins for its teaching of providing the step of "detecting arrival including a generally unique identifier of said customer a predetermined distance from said given location after retrieving said grocery products". The fact that the Jenkins operator also performs other functions is of no consequence here since these other functions in no way discourage the skilled artisan from performing the detecting step relied upon.

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Appellant argues that "Zone 2 [in Jenkins] is the pickup location, and not a predetermined location from the pickup location". (Brief: page 12, first full paragraph).

The Examiner notes that the recitation "a predetermined distance" in claim 1 specifies only that the distance is decided in advance. The recitation places no measure of separation between the detection location and the pick-up location as apparently argued by Appellant. Even if Jenkins has placed the location of the detecting step to be coincident (i.e. distance=0) with the location of the location of the pickup, as argued by Appellant, this does not mean that Jenkins has not otherwise met the limitation of claim 1 in predetermining, or deciding in advance, the location of the detecting step.

Nonetheless, and assuming *arguendo* that the recitation "detecting arrival including a generally unique identifier of said customer a predetermined distance from said [pick up] location" is considered to be a non-coincident (i.e. distance \neq 0) location from said pick up location (as offered by Appellant), then Jenkins remains intact. This is because the step of detecting is performed by the operator at the finalizing terminal (34) (Jenkins: col. 6, lines 22-26), while the pick-up step is performed at a location which is

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non-coincident with the location of the finalizing terminal (such as at the location of the customer's vehicle 40) (Jenkins: col. 6, lines 31-33; and Fig. 1).

Appellant argues that "As customers do not leave their vehicles and go straight to the designated pick up station, there is no issue of customer vehicle queuing at a pick up station that is different from that of orders placed. Accordingly, there is no need in Domain of having Jenkins' employee on foot carrying a wireless transceiver communicating the order of customer queuing". (Brief: paragraph bridging pages 12 and 13).

The Examiner notes that the Domain method, like the Jenkins method involves the retrieval of products for the customer by designated personnel to assemble and convey the customer order to the pick up location (see Domain: col. 13, lines 44-64; and Jenkins: col. 5, lines 10-25). Each of these methods involves multiple stages and extensive handling before the customer order is finally conveyed to the pick up location. Given the complexity of both the Domain and Jenkins methods, the Examiner does not agree that simple coordinated order/vehicle queuing provides absolute assurance that the customer order will be matched

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to the customer. This position is supported by the fact that Jenkins has recognized a need to detect the arrival of a particular customer so that that particular customer may be matched, via a generally unique identifier, with that particular customer's order (Jenkins: col. 6, lines 22-33).

Moreover, the Examiner has proceeded to offer a scenario in which the customer in Domain has engaged in one of the restricted transactions discussed above—e.g. the purchase of liquor. In this scenario it is clear that both the orderer and the orderer have a vested interest in ensuring that the order is matched to the customer. The customer's interest is that they receive the liquor that they have ordered. The Complex's interest is that they distribute the liquor to the same person who initiated the restricted transaction for the liquor. This scenario was not offered as the sole motivation for combining the teachings of Domain and Jenkins, but rather as a concrete collateral benefit (i.e. a cross-check) of providing Jenkins teaching in the method of Domain in an environment already taught by Domain.

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Appellant argues that "Domain does not disclose or suggest moving the grocery products to the selected loading area for customer pickup responsive to detection of the customer" (Appellant's emphasis). (Brief: page 13, first full paragraph).

The Examiner notes that Domain discloses at col. 17, lines 13-21:

"As a customers [sic] vehicle arrives at a particular order pick-up station location, magnetic sensors (not shown) at the location will indicate to the order clerk in charge of routing vehicles to that location that the particular location is occupied by a vehicle and is closed. The magnetic sensors will also inform the Vendors' Complex employee operating the dumbwaiter location that the customer has accessed the pick-up location and is awaiting their ordered goods" (emphasis added).

The Examiner further notes that Domain discloses at col. 19, lines 63-68:

"When the compiled order of goods has been verified at the dumbwaiter elevator location, the Vendors' Complex employee then places the goods in the dumbwaiter elevator and sends the goods down to the pick-up station location where they are received by the customer who ordered the goods."

Accordingly, and as stated in the final Office action (at page 3), Domain does disclose the step of moving the grocery products to the selected loading area for customer pickup responsive to detection of the customer.

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Appellant further argues that "Domain, by contrast, appears to disclose moving products to a pickup station responsive to placement of an order by the customer. The Examiner contends that this is, however, shown by Jenkins before the customer moves to the final checkout Zone 2. However, as Domain has already triggered movement of products to the pick up area (responsive to placement of an order), there would be no reason whatsoever to do it again using the methods of Jenkins. Such additional triggering would be redundant at best, and most likely confusing and disruptive." (Brief: page 13, first full paragraph)

The Examiner believes that Appellant's premise that Domain discloses moving products to a pickup station responsive to placement of an order by the customer is faulty. This is because Domain discloses at col. 16, lines 47-51:

"Once the customer has placed and paid for their order for goods and services at a particular customer order station 14, the customer will be directed by the order clerk to proceed forward to an assigned order pick-up station 16."

Domain further discloses at col. 17, lines 30-35:

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"When a vehicle leaves a particular pick-up station location 16, the magnetic sensors (not shown) indicate to the order clerk in charge of the particular aisle that a vehicle has left the pick-up station location and that that location is once again open for delivery of goods to a subsequent customer."

Accordingly, Appellant's premise that products are moved to a pickup station responsive to placement of an order by the customer cannot be realized until both the order is placed and the customer is assigned a pick-up location based upon availability of a pick-up location as determined by the order clerk. The placement of an order alone by the customer does not "trigger" movement of products to a pickup station in Domain. This is because the destination of the products is not known until the pick-up location is determined by the order clerk.

Nevertheless, Applicant portrays the movement of products through the Domain Complex method in an overly simplistic manner. The products are moved from many locations to many other locations in the Domain Vendor Complex. One stage, and particularly the stage relied upon by the Examiner, finds the products being moved by the Vendor's Complex employee operating the dumbwaiter location to the customer at the selected loading area for customer

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pick-up. Such movement is in response to detection of the customer at the pick-up location by the magnetic sensors.

Additionally, Appellant mischaracterizes the position of the Examiner as it relates to the teaching relied upon in Jenkins. The Examiner does not rely upon Jenkins to satisfy this aspect of claim 1. As stated in the final Office action, the Examiner's position is that Domain discloses the detecting step (as discussed above and in the final Office action at the paragraph bridging pages 2 and 3). Further, and as stated in the final Office action, Jenkins is relied upon for its teaching of detecting a generally unique identifier (final Office action at page 3, second full paragraph-paragraph bridging pages 3 and 4).

Argument II

Claim 2

Appellant argues that "in Domain's system, customers must verbally identify products desired, and the order clerks then electronically enter the orders. The order clerks must visually verify the identity of customers when, e.g. liquor purchases are made or payment is made using checks. This would not be possible if the customer

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ordering was done at a remote client machine as disclosed, e.g. by Matsumori, which teaches an Internet based ordering system." (Brief: page 14, second full paragraph).

The Examiner notes, again, that Domain discloses that the customer may employ numerous interfaces for placing an order with the Complex Vendor system of Domain. For example, the customer may place an order via the audio communication system (Domain: col. 7, lines 39-43) or via the telephone or facsimile (Domain: col. 11, lines 24-27). Of particular relevance here is the embodiment in which the customer places a facsimile order. Such interface does not require that the customer verbally identify products desired.

Moreover, such facsimile interface does not require a visual verification of the identity of the customer. Such facsimile interface would, however, entail a textual identification of the products desired. Such facsimile order would be akin to the Internet-based ordering system of Matsumori. Accordingly, the combination of Domain and Matsumori is not incompatible with nor taught against by Domain.

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Appellant argues that "Jenkins discloses customer ordering in combination with the customer physically inspecting available products. More specifically, a significant part of the Jenkins system is an extensive product display area 42 having an array of many individual containers 44, each having an outer transparent door 52 that can be opened by customers to physically remove and inspect the articles they are considering buying. (col. 3, lines 54-58). Thus, customers can physically inspect items before purchase. This inspection process would, of course, not be possible with any ordering using a remote client machine." (Brief: page 14, third full paragraph).

The Examiner notes that Jenkins has not been relied upon in teaching "receiving an order at a Web server from a remote client machine operated by the customer" as recited in claim 2. Rather, and as stated in the final Office action (at page 5), Matsumori has been relied upon in teaching such step.

Moreover, the Examiner has not attempted to modify the Jenkins method, as argued by Appellant, but rather has modified the Domain method in combining the teaching of Matsumori with the method steps of Domain already provided.

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Claim 3

Appellant argues that "Matsumori further does not disclose or suggest ordering by any wireless device" (Brief: page 14, second full paragraph); that "Jenkins does not disclose or suggest any [use of a wireless communication device located in a vehicle in which said customer is seated] (Brief: page 14, third full paragraph); that "[the inspection process of Jenkins] would, of course, not be possible with [a wireless device]" (Brief: page 14, third full paragraph); and that "Hall, however, is not properly combinable with Domain or Jenkins for the same reasons specified above with Matsumori" (Brief: paragraph bridging pages 14 and 15).

The Examiner notes that neither Matsumori nor Jenkins have been relied upon in teaching the recitation of claim 3 that "said client machine comprises a wireless communications device located in a vehicle in which said customer is seated". Rather, and as stated in the final Office action at page 5, last paragraph-page 6, third paragraph, the Examiner has modified the Domain method in combining the teaching of Hall with the method steps of Domain already provided.

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Moreover, the arguments with respect to Matsumori are not persuasive, and, accordingly, the same arguments when applied in support of patentability of claim 3 over Hall are equally not persuasive.

Argument III

Appellant argues that "[t]he employee [of Jenkins] cannot direct a customer to one of a plurality of a [sic] loading stations at said given location responsive to detecting the presence of the customer for the simple reason that there is only one loading station. In addition, the product cannot be moved to one of a plurality of loading stations for customer pickup responsive to detecting the presence of the customer again for the reason that there is only one loading station". (Brief: paragraph bridging pages 15 and 16).

The Examiner notes that Jenkins is not relied upon for a teaching of providing a plurality of loading stations for customer pickup. Rather, and as stated in the final Office action at page 7, first full paragraph, Domain has been relied upon in disclosing a plurality of loading stations. Jenkins, as stated in the final Office action at page 8,

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second full paragraph-page 9, first full paragraph, has been relied upon for its teaching that the presence of a customer is detected including the detection of a generally unique identifier. The customer, after a validating comparison of the generally unique identifier, is permitted to move to a final checkout zone (zone 2) in a vehicle checkout area (38) where the customer's order is then loaded into the vehicle (see col. 6, lines 5-33).

Appellant argues that "the combination of Domain and Jenkins is improper because not only do the references not suggest their combination, they teach away from combination as discussed at length above with respect to Claim 1". (Brief: page 16, first full paragraph).

The Examiner notes that final Office action at page 9, first full paragraph, provides a statement of motivation in support of the *prima facie* case of obviousness advanced with respect to Domain and Jenkins.

Moreover, the Examiner has addressed Appellant's argument that Domain and Jenkins teach away from combination with respect to claim 1, above.

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Argument IV

Appellant argues that "Domain does not teach or suggest either (1) a detection apparatus for detecting the arrival including a generally unique identifier of the customer to pickup previously ordered products, or (2) a transfer mechanism responsive to detection of the customer by the detection apparatus for moving the products from the storage area to a loading station at which the customer can pickup the product. The Examiner contends that Jenkins discloses these elements." (Brief: page 16, fourth full paragraph).

The Examiner has not relied upon Jenkins in disclosing these elements. Rather, and as stated in the final Office action at page 6, last full paragraph-page 7, second full paragraph, Domain discloses these aspects of claim 49. For example, Domain discloses at col. 17, lines 13-21:

"As a customers [sic] vehicle arrives at a particular order pick-up station location, magnetic sensors (not shown) at the location will indicate to the order clerk in charge of routing vehicles to that location that the particular location is occupied by a vehicle and is closed. The magnetic sensors will also inform the Vendors' Complex employee operating the dumbwaiter location that the customer has accessed the pick-up location and is awaiting their ordered goods" (emphasis added).

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Further, Domain discloses at col. 19, lines 63-68:

"When the compiled order of goods has been verified at the dumbwaiter elevator location, the Vendors' Complex employee then places the goods in the dumbwaiter elevator and sends the goods down to the pick-up station location where they are received by the customer who ordered the goods."

Jenkins has merely been relied upon for its teaching of detecting a generally unique identifier.

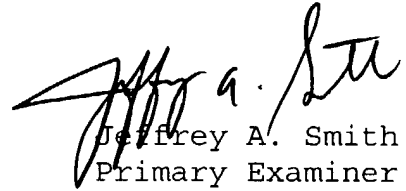
Appellant argues that "as previously discussed at length, the teaching of Jenkins are not properly combinable with Domain, and the Examiner has simply made an impermissible hindsight reconstruction of Applicant's invention using isolated teachings of the prior art".
(Brief: page 16, fourth full paragraph)

The Examiner has addressed the combinability and motivation for combining Domain and Jenkins above with respect to claim 1.

For the above reasons, it is believed that the rejections should be sustained.


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Respectfully submitted,



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Appendix A

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, and 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domain et al. (U.S. Patent No. 5,158,155) in view of in view of Jenkins (U.S. Patent No. 5,186,281) and Matsumori (U.S. Patent No. 6,246,998 B1).

Domain et al. discloses a method of selling groceries (col. 2, lines 54-57) comprising receiving an online order (col. 3, lines 32-36); electronically processing payment information (col. 7, lines 51-56); retrieving grocery products (col. 15, line 57-col. 16, line 2); detecting arrival of said customer (col. 17, lines 13-21); selecting one of a plurality of loading areas (col. 15, lines 22-25) based on availability (col. 17, lines 13-35) and directing said customer to said selected areas (col. 15, lines 22-25); moving said grocery products to said selected loading area (col. 19, lines 59-68).

The order is received from the customer while the customer is at a location (i.e. an order station) which is remote from a given pick up location (col. 9, lines 26-35).

Although Domain et al. discloses detecting arrival of said customer a predetermined distance from said given location, Domain et al. does not disclose detecting a

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generally unique identifier after retrieving said grocery products.

Jenkins, however, in a similar method of selling groceries (see col. 1, lines 5-18; and col. 3, lines 23-42), discloses detecting arrival including a generally unique identifier of a customer a predetermined distance from a given (pick up) location after retrieving grocery products (col. 6, lines 5-33).

It would have been obvious to one of ordinary skill in the art to have provided the method of Domain et al. to have included detecting arrival including a generally unique identifier of a customer a predetermined distance from a given location after retrieving grocery products in order to have ensured that the order is properly matched to the orderer (col. 6, lines 22-33). Such modification would have been of particular importance in the method of Domain et al. (see col. 11, line 57-col. 12, line 3) in ensuring that a customer receiving a liquor item at the pick up location was, in fact, the same customer who placed the liquor item order. Such modification would have served as a cross-check and would have better served the legal interests of the Domain et al. providers than the single-check method already provided.

Further, Domain et al. does not disclose maintaining the products in generally the same temperature conditions as the products were kept in storage.

Matsumori discloses, in a similar method (col. 2, line 45-col. 3, line 24), a step of maintaining retrieved grocery products in generally the same temperature conditions as said products were kept in a storage area (col. 8, line 55-col. 9, line 6).

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It would have been obvious to one of ordinary skill in the art to have provide the method of Domain et al. to have further included a step of maintaining the retrieved groceries in generally the same temperature conditions as said products were kept in the storage area in order to have maintained various portions of the customer's order in an appropriate environment according to their environmental storage requirements (col. 8, line 55-col. 9, line 6).

Regarding claim 2, Domain does not disclose receiving an order at a Web server.

Matsumori, however, discloses a method of Internet based home shopping employing an Internet access to a grocery system server (col. 2, lines 46-58).

It would have been obvious to one of ordinary skill in the art to have provided the method of Domain et al. to have included receiving the order at a web server from a remote client machine (as taught by Matsumori) as such server would have provided enhanced functionality such as merchandise browsing (col. 3, line 65-col. 4, line 13) not otherwise available via the remote telephone ordering already taught by Domain et al. (col. 11, lines 24-27).

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domain et al. (U.S. Patent No. 5,158,155), Jenkins (U.S. Patent No. 5,186,281), and Matsumori (U.S. Patent No. 6,246,998 B1) as applied to claims 1 and 2 above, and further in view of Hall et al. (U.S. Patent No. 6,026,375).

The combination of Domain et al., Jenkins and Matsumori does not provide a wireless client machine or an identification device.

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Hall et al., in a similar method (col. 1, lines 5-12), discloses a client machine comprising a wireless communications and identification device located in a vehicle (col. 5, lines 48-65).

It would have been obvious to one of ordinary skill in the art to have provided the combined method of Domain et al., Jenkins, and Matsumori to have included a wireless communications and identification device (of the type disclosed by Hall et al.) in order to have provided enhanced functionality such as mobile order placement and customer arrival detection (Hall et al.: col. 5, lines 8-30) in order to have provided highly expedited services to customers in a mobile environment and to have eliminated or greatly reduced the time the customer spends waiting to receive goods (col. 1, lines 5-21).

Claims 12, 18, 19, 26, 29, 30, 32, 33, 35, 40-45, 48, 49, 51, 53, 54, 58, and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domain et al. (U.S. Patent No. 5,158,155) in view of Jenkins (U.S. Patent No. 5,186,281).

Domain et al. discloses a system and method of selling groceries (col. 2, lines 54-57) comprising receiving an online order (col. 3, lines 32-36); electronically processing payment information (col. 7, lines 51-56); retrieving grocery products (col. 15, line 57-col. 16, line 2); detecting arrival of said customer (col. 17, lines 13-21); selecting one of a plurality of loading areas (col. 15, lines 22-25) based on availability (col. 17, lines 13-35) and directing said customer to said selected areas

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(col. 15, lines 22-25); moving said grocery products to said selected loading area (col. 19, lines 59-68).

The order is received from the customer while the customer is at a location (e.g. an order station) which is remote from a given pick up location (col. 9, lines 26-35).

Regarding claims 12 and 49, although Domain et al. discloses detecting arrival of said customer a predetermined distance from said given location, Domain et al. does not disclose detecting a generally unique identifier after retrieving said grocery products.

Jenkins, however, in a similar method of selling groceries (see col. 1, lines 5-18; and col. 3, lines 23-42), discloses detecting arrival including a generally unique identifier of a customer a predetermined distance from a given (pick up) location after retrieving grocery products (col. 6, lines 5-33).

It would have been obvious to one of ordinary skill in the art to have provided the method of Domain et al. to have included detecting arrival including a generally unique identifier of a customer a predetermined distance from a given location after retrieving grocery products in order to have ensured that the order is properly matched to the orderer (col. 6, lines 22-33). Such modification would have been of particular importance in the method of Domain et al. (see col. 11, line 57-col. 12, line 3) in ensuring that a customer receiving a liquor item at the pick up location was, in fact, the same customer who placed the liquor item order. Such modification would have served as a cross-check and would have better served the legal interests of the Domain et al. providers than the single-check method already provided.

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Regarding claim 12, Domain does not disclose directing said customer to one of a plurality of loading stations at said given location responsive to detecting the presence of the customer; nor associating said product with said customer and moving said product to said one of a plurality of loading stations for customer pickup responsive to detecting the presence of the customer.

However, Jenkins discloses that the presence of a customer is detected including the detection of a generally unique identifier. The customer, after a validating comparison of the generally unique identifier, is permitted to move to a final checkout zone (zone 2) in a vehicle checkout area (38) where the customer's order is then loaded into the vehicle (see col. 6, lines 5-33).

It would have been obvious to one of ordinary skill in the art to have provided the method Domain et al. to have included the steps of directing said customer to one of a plurality of loading stations at said given location responsive to detecting the presence of the customer; and associating said product with said customer and moving said product to said one of a plurality of loading stations for customer pickup responsive to detecting the presence of the customer in order to have ensured that the order is properly matched to the orderer (col. 6, lines 22-33) and to have completed the transaction (col. 6, lines 31-33).

Claims 13-16, and 50 are rejected under 35

U.S.C. 103(a) as being unpatentable over Domain et al.

(U.S. Patent No. 5,158,155) and Jenkins (U.S. Patent No. 5,186,281), as applied to claims 12 and 49 above, and

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further in view of Matsumori (U.S. Patent No. 6,246,998 B1).

The combination of Domain et al. and Jenkins does not provide the step of receiving an order at a Web server.

Matsumori, however, discloses a method of Internet based home shopping employing an Internet access to a grocery system server (col. 2, lines 46-58).

It would have been obvious to one of ordinary skill in the art to have provided the combined method of Domain et al. and Jenkins to have included receiving the order at a web server from a remote client machine (as taught by Matsumori) as such server would have provided enhanced functionality such as merchandise browsing (col. 3, line 65-col. 4, line 13) not otherwise available via the remote telephone ordering already taught by Domain et al.

Claim 17 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domain et al. (U.S. Patent No. 5,158,155), Jenkins (U.S. Patent No. 5,186,281), and Matsumori (U.S. Patent No. 6,246,998 B1) as applied to claim 13 above, and further in view of Hall et al. (U.S. Patent No. 6,026,375).

The combination of Domain et al., Jenkins and Matsumori does not provide a wireless client machine and identification device.

Hall et al., in a similar method (col. 1, lines 5-12), discloses a client machine comprising a wireless communications and identification device located in a vehicle (col. 5, lines 48-65).

It would have been obvious to one of ordinary skill in the art to have provided the combined method of Domain et

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al., Jenkins, and Matsumori to have included a wireless communications and identification device (of the type disclosed by Hall et al.) in order to have provided enhanced functionality such as mobile order placement and customer arrival detection (Hall et al.: col. 5, lines 8-30) in order to have provided highly expedited services to customers in a mobile environment and to have eliminated or greatly reduced the time the customer spends waiting to receive goods (col. 1, lines 5-21).

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Domain et al. (U.S. Patent No. 5,158,155) and Jenkins (U.S. Patent No. 5,186,281), as applied to claim 19 above, and further in view of Matsumori (U.S. Patent No. 6,246,998 B1).

The combination of Domain et al. and Jenkins does not provide maintaining the products in generally the same temperature conditions as the products were kept in storage.

Matsumori discloses, in a similar method (col. 2, line 45-col. 3, line 24), a step of maintaining retrieved grocery products in generally the same temperature conditions as said products were kept in a storage area (col. 8, line 55-col. 9, line 6).

It would have been obvious to one of ordinary skill in the art to have provided the combined method of Domain et al. and Jenkins to have included a step of maintaining the retrieved groceries in generally the same temperature conditions as said products were kept in the storage area in order to have maintained various portions of the customer's order in an appropriate environment according to

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their environmental storage requirements (Matsumori: col. 8, line 55-col. 9, line 6).

Claims 21, 27, 28, 31, 34, 36-39, 57, 60, and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domain et al. (U.S. Patent No. 5,158,155) and Jenkins (U.S. Patent No. 5,186,281) as applied to claims 12, 26, 30, and 49, above, and further in view of Ruppert et al. (U.S. Patent No. 5,640,002).

Domain et al. does disclose that a vendor will assemble an order and place them in a box or bag carrier and then send the order to a goods compilation area where other orders are compiled for the customer. The compiled order is checked by employees against a list of total ordered items (col. 19, lines 23-68). Nonetheless, the combination of Domain et al. and Jenkins does not provide placing said products in a container having an identification tag.

Ruppert et al. discloses, in a similar method (col. 40, lines 47-67), discloses tagging a bag to identify the contents (col. 41, lines 26-30).

It would have been obvious to one of ordinary skill in the art to have provided the combination of Domain et al. and Jenkins to have included the step of placing the products in a container having an identification tag and associating the tag to the order (as taught by Ruppert et al.) so that the various boxed or bagged orders of Domain et al. could have been readily identified for compilation into a total purchased order (such as already disclosed by Domain et al.).

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Although the combination does not provide that the container comprises an electronic display, to have modified the Ruppert et al. tag already taught to have included an electronic display would have been obvious to one of ordinary skill in the art in order to have provided a visually discernable readout such that employees compiling the orders into a total order could have readily identified the particular containers.

The combination of Domain et al. and Jenkins does not provide receiving an input on a keypad identifying a customer or receiving an input using a machine reader to read a card.

Ruppert et al, however, discloses that a customer types a PIN number into a special PIN terminal in the customer pickup area (col. 40, lines 55-58).

It would have been obvious to one of ordinary skill in the art to have provided the combined method of Domain et al. and Jenkins to have included the step of receiving an input on a keypad identifying a customer such that the customer may be authenticated and the pickup clerk may release the order to the proper customer (col. 40, lines 55-67).

Further, although Ruppert et al. does not disclose a card reader for the above purpose, Ruppert et al. does teach that a customer is issued a magnetic stripe card when invited to join their program (col. 38, line 53-col. 39, line 5).

It would have been obvious to have employed a magnetic card reader to have read the program issued customer card in lieu of receiving PIN number input from the customer (as previously discussed) as such machine reader input

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mechanism would have amounted to the mere substitution of an equivalent input means for the purpose of authenticating the customer upon pickup of the purchased order.

The combination of Domain et al. and Jenkins does not disclose detecting whether the customer is attempting to leave with a container.

Ruppert et al. discloses that their method includes detecting whether a customer is attempting to leave a given location with a container, and if so, alerting the customer to return said container (col. 38, lines 23-44).

It would have been obvious to one of ordinary skill in the art to have provided the combined method of Domain et al. and Jenkins to have included the step of detecting whether a customer is attempting to leave a given location with a container, and if so, alerting the customer to return said container (as taught by Ruppert et al.) in order to have prevented unauthorized removal of the container.

The combination of Domain et al. and Jenkins does not provided registering the customer.

Ruppert et al., however, discloses that their system includes a customer program which customers may join (col. 39, lines 2-5). Background checks are conducted (col. 38, line 66-col. 2) and the customer is issued a customer ID (col. 39, lines 6-9). Buyer profile is established (col. 39, lines 50-57).

It would have been obvious to one of ordinary skill in the art to have provided the combined method of Domain et al. and Jenkins to have included the steps of registering the customer, receiving customer username and password information, receiving contact information, and receiving

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buyer profile information in order to have assembled such information in a program database such that customer transactions could have been greatly expedited (col. 39, lines 55-56).

Claims 46, 55, and 56 are rejected under 35

U.S.C. 103(a) as being unpatentable over Domain et al. (U.S. Patent No. 5,158,155) and Jenkins (U.S. Patent No. 5,186,281), as applied to claim 12, and further in view of Hall et al. (U.S. Patent No. 6,026,375).

The combination of Domain et al. and Jenkins does not provide receiving customer information on what time the customer wishes to pick up the product.

Hall et al., however, discloses that their method comprises a step of receiving from the customer information on approximately what time the customer wishes to pick up the product (col. 9, lines 43-46).

It would have been obvious to one of ordinary skill in the art to have provided the combination of Domain et al. and Jenkins to have included the step of receiving from the customer information on approximately what time the customer wishes to pick up the product (as taught by Hall et al.) in order to have satisfactorily satisfied the customer's needed time frame for the ordered products (col. 9, lines 43-46).

The combination of Domain et al. and Jenkins does not provide an identification device.

Hall et al., however, discloses a client machine comprising an identification device located in a vehicle (col. 5, lines 48-65).

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It would have been obvious to one of ordinary skill in the art to have provided the combination of Domain et al. and Jenkins to have included an identification device (of the type disclosed by Hall et al.) in order to have provided enhanced functionality such as customer arrival detection (Hall et al.: col. 5, lines 8-30) in order to have provided highly expedited services to customers in a mobile environment and to have eliminated or greatly reduced the time the customer spends waiting to receive goods (col. 1, lines 5-21).

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Domain et al. (U.S. Patent No. 5,158,155), Jenkins (U.S. Patent No. 5,186,281), and Hall et al. (U.S. Patent No. 6,026,375), as applied to claim 46 above, and further in view of Official Notice.

The combined method of Domain et al. and Hall et al. does not provide the step of charging the customer a fee based on when the customer wishes to pick up the ordered product.

However, Official Notice is taken that it is notoriously well-known for businesses to provide "rush service" for orders required in short time. For example, many known couriers establish rates based on the immediacy of the service desired. Rates routinely are established which charge the customer a premium fee for "rush service" versus "normal service". Such rates reflect the urgency that the courier must treat the service in dedicating resources and manpower to the desired task.

Accordingly, it would have been obvious to one of ordinary skill in the art to have provided the combined

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method of Domain et al., Jenkins, and Hall et al to have included the step of charging the customer a fee based on when the customer wishes to pick up the order product in order to have received appropriate compensation for the level of service desired by the customer.

Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Domain et al. (U.S. Patent No. 5,158,155) and Jenkins (U.S. Patent No. 5,186,281), as applied to claim 49 above, and further in view of Matsumori (U.S. Patent No. 6,246,998 B1).

The combination of Domain et al. and Jenkins does not provide a storage area comprising an area for storing refrigerated goods, an area for storing frozen goods, and an area for storing goods at room temperature.

Matsumori discloses, in a similar system (col. 2, line 45-col. 3, line 24), maintaining retrieved grocery products in generally the same temperature conditions as said products were kept in a storage area (col. 8, line 55-col. 9, line 6).

It would have been obvious to one of ordinary skill in the art to have provided the combined system of Domain et al. and Jenkins to have included respective storage areas for storing the retrieved groceries in generally the same temperature conditions as said products were kept in the storage area in order to have maintained various portions of the customer's order in an appropriate environment according to their environmental storage requirements (Matsumori: col. 8, line 55-col. 9, line 6).